

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



# 74-1322

**United States Court of Appeals  
FOR THE SECOND CIRCUIT**

**Docket No. 74-1322**

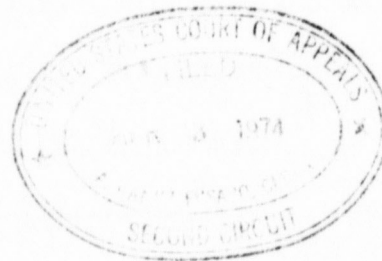
In the Matter of the GRAND JURY SUBPOENA of  
FRED VIGORITO, ALEXANDER NOCE and DIEGO ASARO,  
*Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

**APPENDIX FOR THE APPELLANT**

EDWARD J. BOYD, V,  
*United States Attorney,  
Eastern District of New York.*

DENIS E. DILLON,  
FRED F. BARLOW,  
JAMES W. DOUGHERTY,  
*Special Attorneys,  
Department of Justice,*



PAGINATION AS IN ORIGINAL COPY



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## 73-C-1880 IN THE MATTER OF THE GRAND JURY SUBPOENA of FRED VIGORITO, ET AL

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
12-20-73	Notice of motion filed for an order (1) Ordering a hearing to determine the existence and validity of any court order which purports to authorize the electronic interception of any telephone or other conversation involving the above-named parties on April 12, 1973, May 3, 1973 and May 24, 1973, etc (returnable 12-28-1973)	1
12-28-73	Before DOOLING, J. Defendants motion to suppress, etc. ARGUED. DECISION RESERVED.	
1-2-74	BY DOOLING, J. MEMORANDUM and ORDER FILED. ORDERED that no use be made before any grand jury of any of the tape recordings taken pursuant to the orders of April 12, May 3 and May 24, 1973, of conversations of or implicating the moving parties, or any matter derived from them, or any use of the voice exemplars, until after disclosure to counsel for the moving parties, etc. (See Memo and Order) Copy sent out by secretary to DOOLING, J.	2
1-10-74	MOTION FILED TO VACATE ORDER.	3
1-14-74	BY DOOLING, J. MEMORANDUM and ORDER FILED. The application for reconsideration is DENIED. IT IS SO ORDERED. (See Memo., etc.) Copies sent out by the secretary to DOOLING, J.	4
1-17-74	Stenographer's transcript dtd. 12-23-73 filed/	5
1-23-74	Affidavit of FRED E. BARLOE, Special Adty., filed.	6
1-23-74	Motion filed to vacate order and for a rehearing, etc.	7
1-23-74	GOVERNMENT'S MEMORANDUM OF LAW FILED in support of motion, ewc	8
1-30-74	Before DOOLING, J. Case called. Motion to vacate order, etc ARGUED. MOTION DENIED.	
1-1-74	NOTICE OF APPEAL FILED (U.S.A.) Affidavit and letter (attached)	9
1-2-74	Copy of Notice of appeal was on this day mailed to Clerk, U.S.C.A.	
1-4-74	Affidvit of EDWARD J. BOYD V. U.S. ATTY., filed in support of Notice of Appeal, etc.	10
1-5-74	MEMORANDUM FILED IN OPPOSITION.	11



A 2

TITLE OF CASE

For Plaintiff: GUSTAVE H. ...

522 Fifth Ave.,  
N.Y., N.Y. 10036

For Defendant: U. S. ATTY.

F. BARLOW

**BASIS OF ACTION:**

## JURY TRIAL CLAIMED

ON

[illegible]

### ABSTRACT OF COSTS

TO WHOM DUE

AMOUNT

RECEIPTS, REMARKS, ETC.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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A 3

IN THE MATTER OF THE  
GRAND JURY SUBPOENA

OF

FRED VIGORITO  
ALEXANDER NOCE  
DIEGO ASARO

---

NOTICE OF MOTION

73 C-1880

*File*

S I R S:

PLEASE TAKE NOTICE, that upon the annexed affidavit, upon the Grand Jury Subpoena, and upon the proceedings heretofore had herein, the undersigned will move before the Miscellaneous Judge of this Court on December 28, 1973 at 10:00 A.M. in the forenoon of that date, or as soon thereafter as counsel can be heard, at the Courthouse, 225 Cadman Plaza East, Brooklyn, New York for an order granting the following relief:

1. Ordering a hearing to determine the existence and validity of any court order which purports to authorize the electronic interception of any telephone or other conversation involving the above-named parties on April 12, 1973, May 3, 1973 and May 24, 1973.

2. Upon such hearing suppressing such intercepted conversations from being used before any Grand Jury in this District, and further prevent the use of such intercepted conversations from being used to compare same to voice exemplars given by the above named parties.



3. For such other and further relief as may seem just in the premises.

Yours, etc.

Gustave H. Newman,  
Attorney for Fred Vigorito,  
Alexander Noce and  
Diego Asaro  
Office and Post Office Address  
522 Fifth Avenue  
New York, New York 10036

TO: Honorable Fred Barlow  
Special Attorney  
Department of Justice  
35 Tillary Street  
Brooklyn, New York 11201

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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A 5

IN THE MATTER OF THE  
GRAND JURY SUBPOENA

OF

FRED VIGORITO  
ALEXANDER NOCE  
DIEGO ASARO

---

STATE OF NEW YORK     )  
                              :     ss.:  
COUNTY OF NEW YORK    )

GUSTAVE H. NEWMAN, being duly sworn, deposes and says:

I am the attorney for the subpoenaed parties.

In such capacity, I am fully familiar with all of the facts herein.

I make this affidavit in support of a motion which seeks a hearing on and ultimate suppression of certain electronically intercepted conversations on specific dates.

B A C K G R O U N D

The above parties were subpoenaed to appear before a Grand Jury in this District. At the time of their appearance, it was indicated that certain telephone conversations were intercepted which the Government believes to be conversations of the above-named parties amongst others. Upon their appearance, a request was made to have them furnish exemplars of their speech by having them read a statement into a tape recorder. The authority relied upon by the Government for this procedure

was United States v. Dionisio 93 Sup.Ct. 764 (1973). In order to avoid a contempt citation, your deponent's clients submitted to the voice exemplar pursuant to a stipulation, a copy of which is hereto annexed as Exhibit "A". I think it may fairly be assumed that the exemplars were taken to be compared to the intercepted voices overheard on the three aforementioned dates. If the comparisons show the intercepted voices to be the same as the voice exemplars, then certainly the material will be presented for an indictment for violation of the Federal Gambling Statutes.

#### T H I S M O T I O N

This motion is made to obtain a hearing before the Court as to whether the electronic interceptions were based upon Court orders; if they were based upon Court orders, then to determine the validity of the Court order.

As previously indicated, the authority for the voice exemplars was announced in United States v. Dionisio, supra. The attack on the procedure in that case was under the Fourth, Fifth and Sixth Amendments. Those attacks were of course struck down. At bar, we are beyond that point; we have submitted to the voice exemplars, therefore the Dionisio case does not come into play.

The thrust of our position at bar is pursuant to the provisions of 18 U.S.C. 2515, commonly referred to as the Safe Streets Act. That section reads as follows in its applicable provision:



Prohibition of Use as Evidence of Intercepted Wire or Oral Communications

A

7

"Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision thereof if the disclosure of that information would be in violation of this chapter."

It prohibits the introduction before a Grand Jury of any evidence seized in violation of or by non-compliance with this Section.

As previously indicated, the intercepted conversations at bar will be compared with the exemplars and both will be introduced before a Grand Jury.

Certainly, the right of a witness before a Grand Jury to raise the issue of electronic interception of his conversation has been established in Egan v. United States and United States v. Gelbard, both reported at 92 Sup. Ct. 2357.

Vigorito, Noce and Asaro have been advised that conversations alleged to be theirs, have been intercepted. Beyond this, however, certainly the taking of the voice exemplars is sufficient evidence that the Government contends their conversations were intercepted.

The parties have standing to raise this issue since they have been subpoenaed before a Grand Jury; they appeared and the



Government elected to take voice exemplars from them which they have submitted. Thus, in effect, they have testified pursuant to a Grand Jury subpoena and have in effect answered a question which gives them the right to raise the issue of validity of the underlying order.

At the sake of anticipation, it is not sufficient to assure these parties that should they be indicted, they will always have time to challenge the legality of the wire tap. This argument has no merit for many reasons. The statute Title 18 U.S.C. 2515, prohibits the use of material seized in violation of its provisions before a Grand Jury, the Sovereign should not, of all people, be permitted to violate the law. In addition, it is little comfort to an individual faced with the ignominy, aggravation, expense and embarrassment of an indictment, arrest and the ensuing Court proceedings, that he might have a right in the future to establish the illegality of the proceedings. It does not behoove the United States Government to put a citizen through this torture, to determine his ultimate rights, when a preliminary inquiry may determine them for all

time and save the Government monies, the Court time, and more importantly, the individual citizen the torment of indictment and arrest, and all it entails.

WHEREFORE, it is respectfully prayed that the motion be, in all respects, granted.



GUSTAVE H. NEWMAN

Sworn to before me this  
day of December, 1973.

S/ Lenore Berg

Notary Public

LENORE BERG  
Commissioner of Deeds  
City of New York No. 2-1352  
Certificate Filed in New York County  
Commission Expires Aug. 2, 19.....

1. I was subpoenaed to appear before a Federal Grand Jury in the Eastern District of New York on November 5, 1973 and the appearance was postponed until November 19, 1973, when I appeared.
2. I have been told by Fred Barlow, Special Attorney, that this Grand Jury ~~appearance is for the purpose of obtaining a tape recording of my voice that will be used only as a standard of comparison to identify me with respect to electronic surveillance noted below.~~ I also have been told in this Grand Jury by Mr. Barlow that I can give this tape recording voluntarily pursuant to this stipulation, in the Strike Force Office, or before the Grand Jury, whichever I prefer.
3. By giving this voice comparison pursuant to the stipulation, I am not waiving any of my rights to protest or attack the constitutionality and legality of either this procedure or the underlying electronic surveillance.
4. I am aware that the tape recording that I am giving will be compared with recordings of conversations obtained pursuant to court orders in the Eastern District of New York, <sup>D.A.</sup> ~~December 8, 1972, January 15, February 20, April 12, May 3, and May 24, 1973,~~ and I have received an inventory telling me of the existence of these orders, and whether oral or wire communications were intercepted pursuant to them.
5. The voice comparison which I am giving pursuant to this stipulation will be my reading of the first <sup>two</sup> paragraphs of the Declaration of Independence.

Diego Acero

Witness

Fred F. Barlow, Special Attorney

Date 11/30/73



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X  
:  
IN THE MATTER OF THE  
GRAND JURY SUBPOENA  
:  
OF  
:  
FRED VIGORITO  
ALEXANDER NOCE  
DIEGO ASARO  
:  
----- X

*File*

73-C-1880

MEMORANDUM  
and  
ORDER

The moving parties, it is not denied, are persons whose conversations have been intercepted and recorded while they were at the Highway Lounge; the interceptions were made by concealed microphones put in place under an 18 U.S.C. § 2518 order made on April 12, 1973, and extended on May 3, 1973, and May 24, 1973. The moving parties were in September 1973 served with the inventory and notice required by 18 U.S.C. § 2518(8)(d). On November 30, 1973, after service of Grand Jury subpoenas directed to obtaining exemplars of their voices, the moving parties gave tape recordings of their voices to the United States Attorney in the understanding that they could be compared with recordings of the conversations made under the Section 2518(8)(d)

orders referred to above. United States v. Dionisio, 1973 410 U.S.1. They now move for a hearing to determine the existence and validity of the orders authorizing the interceptions, and, upon such hearing, for an order suppressing the use of the intercepted conversations before the Grand Jury or for comparison with the recordings of their voices given to the United States Attorney. The motion is based on 18 U.S.C. § 2515 and Rule 41.

18 U.S.C. § 2515 forbids the use of intercepted oral communications and evidence derived from them before any grand jury, and, unless it is intended that the only safeguard against transgression of that prohibition shall be the ex parte judge's review of the material submitted to him to support the order for interception, it would appear that persons evidently exposed to indictment based on the use of intercepted conversations before the grand jury, should have a means of determining that the interception orders were issued and were issued upon a showing that met the standards of Section 2518. It may be that the rights outlined in 18 U.S.C. § 2518(10) are not available, for its language does not include the words "grand jury", as does the language of Section 2515; it may be that, for the same reason, Section



2517(3) neither authorizes nor forbids disclosure of the contents of such tape recordings to the grand jury by a witness familiar with their contents. Notwithstanding the absence of a specific statutory remedy, it is evident here that the search and seizure are complete and, it appears, the moment of use is at hand, and that the right of use is conditional upon the validity of the order. Within the limits indicated in United States v. Sultan, 2d Cir. 463 F. 2d 1066 at 1069-1070 (and note United States v. Lam, 2d Cir. 1973, Slip Opinions, September Term 1972, 4991), it is concluded, the moving parties have the right to have the orders and supporting affidavits disclosed to their counsel so that he may determine whether or not to advise a contest of the validity of the orders. See United States v. Calandra, 6th Cir. 1972, 465 F. 2d 1218, 1223, cert. granted, 2/20/73, 410 U.S. 925; Cf. Gelbard v. United States, 1972, 408 U.S. 41. But see Cali v. United States, 1st Cir. 1972, 464 F.2d 475. In view, however, of the nature of the investigation counsel may not disclose the contents of the affidavits to the moving parties; at this stage non-disclosure to them does not diminish the utility of the disclosure in the service of any appropriate challenge to the sufficiency of

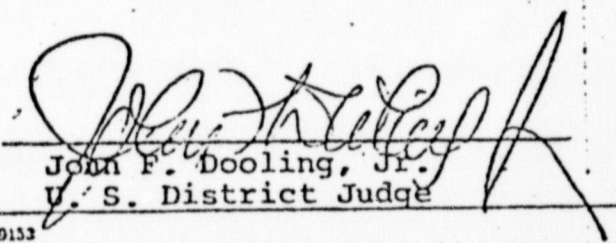
the showing made by the affidavits. At least in the first instance the issue is whether or not a showing sufficient under Section 2518 was made to the ex parte judge to warrant the making of the interception orders. The issue is not, at this stage, whether at a hearing the Government could by testimony establish the existence of probable cause or the moving parties, by evidence, show an absence of probable cause.

It is accordingly

ORDERED that no use be made before any grand jury of any of the tape recordings taken pursuant to the orders of April 12, May 3 and May 24, 1973, of conversations of or implicating the moving parties, or any matter derived from them, or any use of the voice exemplars, until after disclosure to counsel for the moving parties (subject to the restriction on further disclosure to the moving parties set forth above) of the orders and the supporting papers and the expiration thereafter of a reasonable time for such counsel to proceed further with the present motion to suppress the use of the intercepted matter, matter derived from it and the voice exemplars.

Brooklyn, New York

January 2, 1974

  
John F. Dooling, Jr.  
U. S. District Judge



FFB:lp

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
IN THE MATTER OF THE GRAND JURY SUBPOENA

OF

FRED VIGORITO  
ALEXANDER NOCE  
DIEGO ASARO  
-----X

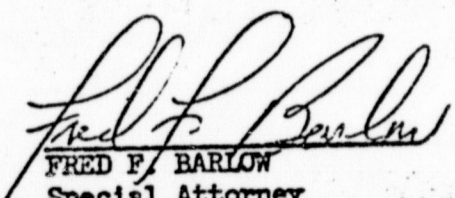
MOTION

73-C-1830

*F165*

MOTION TO VACATE ORDER

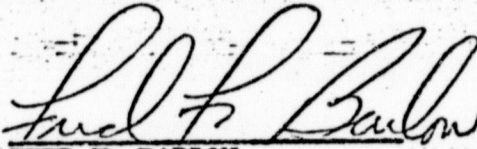
The United States, by Fred F. Barlow, Special Attorney, Department of Justice, moves to vacate this Court's Order of January 2, 1974, in the above matter, on the grounds that United States v. Calandra, \_\_U.S.\_\_, \_\_S.Ct.\_\_, 14 Cr.L. \_\_ (decided January 8, 1974) is dispositive.

  
FRED F. BARLOW  
Special Attorney  
Department of Justice



## CERTIFICATE OF SERVICE

I hereby certify that on January 10, 1974, a copy of the above Motion was mailed, postage paid, to Gustave E. Newman, Esquire, 522 Fifth Avenue, New York, New York, attorney for movants.



FRED P. BARLOW  
Special Attorney

Sworn to before me

this 10th day of January, 1974.



NOTARY PUBLIC

STATE OF N.Y. 30-3610090

QUALIFIED NASSAU

TERM EXPIRES 3-30 75

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X

IN THE MATTER OF THE GRAND JURY :  
SUBPOENA

OF

: 73-C-1880

FRED VIGORITO, ALEXANDER NOCE  
and DIEGO ASARO.

: MEMORANDUM  
and  
: ORDER

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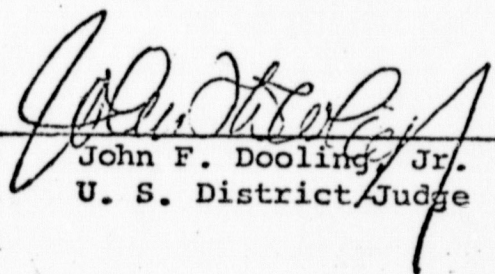
It is now suggested that the order heretofore made must be set aside in light of United States v. Calandra, 1974, 42 L.W. 4104, which has held that a witness called before Grand Jury has no constitutional right to refuse to answer questions based on the unconstitutional seizure of his records. Calandra expressly did not reach the implementation of 18 U.S.C. § 2515. See 42 L.W. at 4109 fn. 11; Gelbard v. United States, 1972, 408 U.S. 41, 60-61.

The application for reconsideration is denied.

It is so ORDERED.

Brooklyn, New York

January 14, 1974

  
John F. Dooling, Jr.  
U. S. District Judge

DED:FFB:mfm

F.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
IN THE MATTER OF THE GRAND JURY SUBPOENA (sic)

OF

AFFIDAVIT

FRED VIGORITO, etal

73 C 1880

-----X  
FRED F. BARLOW, being duly sworn, says:

1. I have been a Special Attorney, Brooklyn, Strike Force, Department of Justice, and an "investigative officer" within the meaning of Title 18, United States Code, Section 2510(7), since February, 1972.

2. I have assisted in the investigation which resulted in the intercepted communications which are the subject of this matter, since February 1972, and am familiar with the facts and circumstances of this investigation.

3. I have personally taken the sealed interception orders, applications, affidavits and other pleadings to the vault of the Clerk of the Court, Eastern District of New York, where they are now maintained, all of these orders being signed by United States District Judges of the Eastern District of New York, as follows: Orin G. Judd, December 8, 1972, authorizing interception of oral communications at Apartment 309, 8-15 27th Avenue, Astoria, Queens, New York; Jack B. Weinstein, January 15, 1973, authorizing interception of oral communications at the same premises; George J. Rosling, February 20, 1973, authorizing interception of wire communications to and from the telephones numbered (212) 932-2708 at the above premises, and (212) 835-1163, at 161-20 91st Street, Howard Beach, Queens, New York; John R. Bartels, April 12 and May 3, 1973.

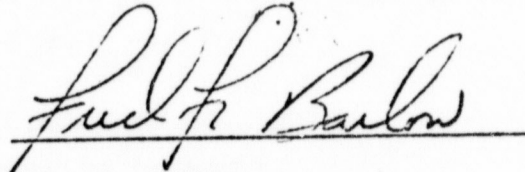


authorizing interception and continued interception of oral communications at the Highway Lounge, 362 Metropolitan Avenue, Williamsburg, Brooklyn, New York; and Edward R. Neaher, May 24, 1972 authorizing continued interception of oral communications at the last named premises.

4. For all of the Orders referred to above in paragraph 3 the following happened: I was the applicant and Special Agent Charlie J. Parsons, Federal Bureau of Investigation, the affiant; Special Agent Parsons and I personally appeared in each Judge's chambers; I observed each Judge personally review the order, application, affidavit and authorization memoranda and letters; I observed each Judge personally sign the authorization order.

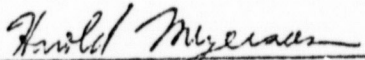
5. In all of the orders referred to above in paragraph 3, the Judge, in the authorizing order, made specific findings of fact, based upon Special Agent Parsons' affidavit and my application, that he found probable cause to believe that the subject persons, identified by name, identified physically as John Does, and also persons then unknown had committed, <sup>and</sup> were committing offenses involving violations enumerated in Title 18, United States Code, Section 2516, that particular oral or wire communications of subject persons would be obtained through interception, that normal investigative procedures reasonably appeared to be unlikely to succeed, if tried further, and that the subject premises and telephones had been and were being used by the subject persons in connection with the described offenses.

6. Inventories were served on or after September 13, 1973 upon more than 40 persons, and after that, grand jury subpoenas were issued for 35 persons, in order to obtain voice exemplars. I expect that at least 7 or more such subpoenas will be issued. 32 persons have provided the exemplars before the instant motion was made.



FRED F. BARLOW  
Special Attorney  
Department of Justice

Sworn to before me this  
23 day of January, 1974.



Not. Public, State of N.Y.

No. 31-7923600

- Qual. in NY County

Com. Expires Mar 30, 1974

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
IN THE MATTER OF THE GRAND JURY SUBPOENA

73-C-1880

OF

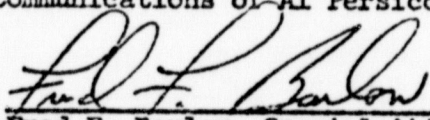
MOTION

FRED VIGORITO  
ALEXANDER NOCE  
DIEGO ASARO  
-----X

GOVERNMENT'S MOTION TO VACATE ORDER AND FOR A REHEARING

The United States, by Special Attorney Fred F. Barlow, Department of Justice, moves this Court to vacate its Order of January 2, 1974, and that a rehearing be had in this matter on January 30, 1974 at 4:30 PM, or as soon thereafter as counsel can be heard, before the Honorable John F. Dooling, Jr., United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, upon the facts in the annexed affidavit and for the reasons stated below:

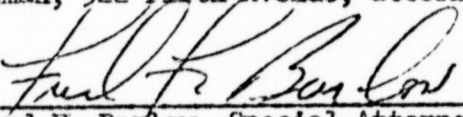
1. Title 18, United States Code, Section 2515 provides no basis for a pre-indictment suppression hearing by a grand jury witness or the subject of a grand jury investigation.
2. Title 18, United States Code, Section 2518(10) expressly excludes grand jury proceedings from the proceedings set forth as the forums for its motions.
3. Absent Title III, Omnibus Crime Control and Safe Streets Acts, there is no statutory or common law authority for pre-indictment suppression hearings, and United States v. Calandra, 4<sup>13</sup>US \_\_\_, 14 Cr.L (decided January 9, 1974) precludes them.
4. This Court's Order is in consistent with its prior rulings of August 6, 1973 (contempt hearing of John E. Garcia and Peter F. Guido), and August 20, 1973, In the Matter of the Interception of Oral Communications of Al Persico, et al, 73 C 1213.

  
Fred F. Barlow, Special Attorney  
Department of Justice



## CERTIFICATE OF SERVICE BY MAILING

I hereby certify that a copy of the Motion, Memorandum and Affidavit, were mailed, postage prepaid, to Gustave H. Newman, 522 Fifth Avenue, attorney for movants, on January 23, 1974.

  
Fred F. Barlow, Special Attorney

Sworn to before me this

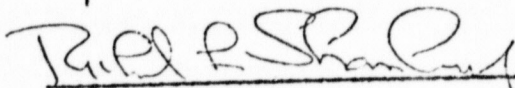
23<sup>rd</sup> day of January, 1974

NOTARY PUBLIC

STATE OF N.Y. 30-3610090

QUALIFIED NASSAU

TERM EXPIRES 3-30 75



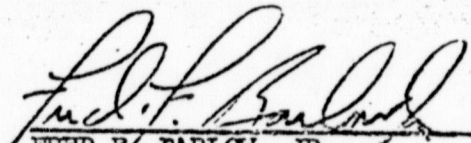
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
IN RE THE MATTER OF THE GRAND JURY  
SUBPOENA OF FRED VIGORITO, ET AL  
-----X

NOTICE OF APPEAL

73 C 1880

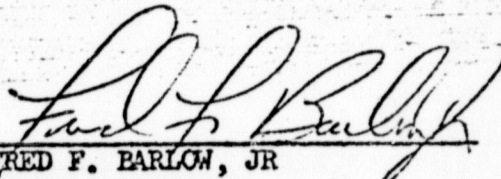
Notice is hereby given that the United States hereby appeals to the United States Court of Appeals for the Second Circuit from the Order entered in this proceeding on the 2nd day of January, 1974, prohibiting use in any grand jury of tape recordings taken pursuant to the orders of April 12, May 3, and May 24, 1973, derivative matters and voice exemplars, until after disclosure to counsel for the moving parties of the orders and supporting papers.

  
FRED E. PARLOW, JR.  
SPECIAL ATTORNEY  
DEPARTMENT OF JUSTICE

Dated: February 1, 1974  
Brooklyn, New York



I hereby certify that on February 1, 1974 copies of this Notice of Appeal, the affidavit in support of it, and the letter to the Honorable John F. Dooling, Jr. to Gustave H. Newman, Esq., 522 Fifth Avenue, New York, New York, Attorney for Movants.

  
 FRED F. BARLOW, JR  
 SPECIAL ATTORNEY  
 DEPARTMENT OF JUSTICE

Sworn to before me this  
 1<sup>st</sup> day of February, 1974



NOTARY PUBLIC  
 STATE OF NEW YORK - 0960235  
 QUALIFIED BRONX COUNTY  
 TERM EXPIRES 3-30-75

-----X  
IN RE THE MATTER OF THE GRAND JURY

AFFIDAVIT

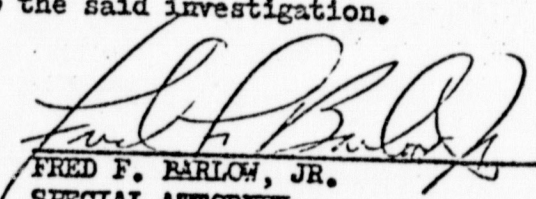
SUBPOENA OF FRED VIGORITO, ET AL  
-----X

73 C 1880

AFFIDAVIT IN SUPPORT OF NOTICE OF APPEAL

FRED F. PARLOW, JR. being duly sworn, says:

1. I am a Special Attorney, Department of Justice, and an "investigative officer" within this meaning of Title 18, U.S.C. § 2510 (7).
2. I have assisted since February, 1972 in the investigation which resulted in the intercepted communications which are the subject of this matter, and am familiar with the facts and circumstances of this investigation.
3. I hereby certify, pursuant to Title 18, U.S.C. § 3731, and Title 18, U.S.C. § 2518 (10) (b), that this appeal is taken in good faith, and is not being taken by the United States for the purpose of delay, and that the intercepted communications, the evidence derived from them, and the voice exemplars furnished by the movants in this investigation are substantial proof of facts material to the said investigation.

  
FRED F. PARLOW, JR.  
SPECIAL ATTORNEY  
DEPARTMENT OF JUSTICE

Sworn to before me this  
1<sup>st</sup> 2<sup>nd</sup> day of February, 1974

*Denis E. Sillon*

NOTARY PUBLIC  
STATE OF NEW YORK - 0960235  
QUALIFIED BRONX COUNTY  
TERM EXPIRES 3-30-75





## UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the  
Division Indicated  
and Refer to Initials and Number

Organized Crime Section  
Criminal Division  
Federal Building  
Room 327-A  
35 Tillary Street  
Brooklyn, NY 11201  
February 1, 1974

Honorable John F. Dooling, Jr.  
United States District Judge  
United States Courthouse  
Eastern District of New York  
225 Cadman Plaza, East  
Brooklyn, NY 11201

Re: In Re the Grand Jury Subpoena of Fred Vigorito, et al - 73 C.1880

Dear Judge Dooling:

*DCS*  
In connection with the Court's Memorandum and Order dated January 2, 1974, the memorandum and order denying reconsideration dated January 14, 1974, and the Court's oral denial of the Government's motion to vacate January 30, 1974 and in order to protect the Government's appellate remedies in this matter the Government respectfully declines to disclose to counsel for the moving parties the orders and supporting papers of the relevant electronic interceptions in this matter.

As the Court knows from the pleadings and oral argument, the Government's position is that Title 18, United States Code, Section 2515 does not provide for a suppression motion at this time to persons in the posture of the movants.

The Government's action herein is undertaken for the purpose of insuring a clear and unambiguous "joinder" of the issue framed by the pleadings for the purpose of appellate review, to the extent that the Court's suppression of evidence and enjoining the use thereof in the grand jury is dependent upon the Government's action or inaction.

Respectfully,

*Fred F. Barlow*  
Fred F. Barlow  
Special Attorney

FTB:dtj

P.S. In order that this letter might be part of the appellate record, I have filed the original letter in the Clerk's Office on this date.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK •

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IN THE MATTER OF THE GRAND JURY SUBPOENA

73-C-1880

OF

AFFIDAVIT

FRED VIGORITO  
ALEXANDER NOCE  
DIEGO ASARO

-----X

AFFIDAVIT IN SUPPORT OF NOTICE OF APPEAL

Edward J. Boyd V, being duly sworn, says:

1. I am the United States Attorney for the Eastern District of New York.
2. I have discussed with Fred F. Barlow, Special Attorney, Department of Justice, the facts and circumstances of this matter, and in particular, the facts concerning and the reasons for the appeal from the Order dated January 2, 1974, of the Honorable John F. Dooling, Jr., United States District Judge, Eastern District of New York.
3. I hereby certify pursuant to Title 18, United States Code, Sections 2518 (10)(b) and 3731 that this appeal is being taken in good faith, that this appeal is not being taken for the purpose of delay, and that the intercepted communications, the evidence derived from them, and the voice exemplars furnished by the movants in this investigation are substantial proof of facts material to the said investigation.

\_\_\_\_\_  
EDWARD J. BOYD V  
UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK

Sworn to before me this  
day of February, 1974.

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